

ENCLOSURE

Index of Releasable Records: Request No. EPA-R5-2016-007645

1. E-mail regarding: City of Evanston, Dodge Avenue Water Line, From: James Morris, To: Jeffery Jeep, cc: Ronna Beckmann, Denise Fortin, Eileen Deamer, Marcy Toney, Debra Klassman, April 28, 2016, 1 page.
2. E-mail plus attachments regarding: City of Evanston, Dodge Avenue Water Line, From: Jeffery Jeep, To: James Morris, cc: Ronna Beckmann, Denise Fortin, Eileen Deamer, Marcy Toney Debra Klassman, Michelle Masoncup, David Hendron, Grant Farrar, Michael Blazer, April 29, 2016, 13 pages.

Index of Withheld Records: Request No. EPA-R5-2016-007645

Under Exemption 5—Attorney Work Product and Attorney-Client Privilege

1. E-mail regarding: City of Evanston v. NICOR – RCRA claims refiled on May 31, 2016, From: Ignacio Arrazola, To: Leverett Nelson, cc: James Morris, Mary Andrews, Marcy Toney, Debra Klassman, June 8, 2016, 1 page.

Morris, James

From: Morris, James
Sent: Thursday, April 28, 2016 5:15 PM
To: 'Jeffery D. Jeep'
Cc: Beckmann, Ronna Erin; Fortin, Denise; Deamer, Eileen; Toney, Marcy; Klassman, Debra
Subject: RE: City of Evanston -- Dodge Avenue Water Line

Hi Jeff,

The Acting Regional Administrator is available to meet in Evanston; however, given his extremely tight calendar—as well as EPA's preliminary conclusion, as expressed in the April 14, 2016, letter to Mayor Tisdahl relating to the Dodge Avenue Water Line and public health—he would like to be provided a written agenda for the proposed meeting, as well as any additional relevant information you may have that has not already been provided to EPA (i.e., information in addition to information contained in the September 25, 2015, letter from you to Susan Hedman, the February 12, 2016, email from you to Rett Nelson, the February 22, 2016, Amended Notice of Intent to Sue, and the March 4, 2016, letter from Mayor Tisdahl to Bob Kaplan).

Because I will be out of the office on April 29th, as well as, potentially, the following Monday, May 2nd, I would ask you to please “reply all” to this email should you provide an agenda or additional information during this time period.

Thanks,

Jim

Morris, James

From: Jeffery D. Jeep <jdjeep@enviroatty.com>
Sent: Friday, April 29, 2016 1:43 PM
To: Morris, James
Cc: Beckmann, Ronna Erin; Fortin, Denise; Deamer, Eileen; Toney, Marcy; Klassman, Debra; Michelle L. Masoncup; David M. Hendron, P.E.; W. Grant Farrar; Michael S. Blazer
Subject: Re: City of Evanston -- Dodge Avenue Water Line
Attachments: Hedman susan - dodge ave water line october 2015[1].pdf; 3-6-16 letter from Mayor to USEPA[1].pdf; RE: City of Evanston; 160418 McMillan Ltr.pdf

Jim,

In response to your email (below), based on the Mayor's correspondence of 10/7/15 and 3/16/16 and Tom Poy's email of 11/19/15 (attached), we assumed the agenda for our meeting was obvious. Please also refer to our April 18, 2016 letter to IEPA (attached). The four bulleted items at page 3 of Mayor Tisdahl's 3/16/16 letter and the description of the problem in our 4/18/16 letter (first block quote) spell out why the City wants to meet with USEPA. However, let me try to spell things out again in the simplest possible terms:

1. Fluoranthene and phenanthrene, constituents of Coal Tar, should not be present in the City's drinking water, at all.
2. Coal tar containing benzo(a)pyrene and other hazardous materials should not coat and have penetrated the Dodge Avenue Water Main.
3. Coal tar is ubiquitous in and around James Park, including around and inside of the Dodge Avenue Water Main.
4. We have provided USEPA with two reports, the 2015 and 2016 Hendron Reports, which establish that the Coal tar is associated with the infrastructure used by ComEd and Nicor to distribute the dirty, MG Waste Oil laden gas manufactured at the Skokie MGP Site from 1910 to the mid-1950's.
5. ComEd and Nicor have not undertaken any investigation to identify this infrastructure, or, if they have, they have not shared their findings with the City. In fact, ComEd and Nicor have rebuffed all inquiries by the City concerning the location of this infrastructure, particularly in relation to the City's water distribution infrastructure. Specifically, the Nicor and ComEd have ignored requests for information from Gregory Klaiber, the Fire Chief for the City of Evanston. This chronology is set out in detail in the RCRA Notices provided to USEPA.
6. The City has no idea what discussions US EPA has had or is having with Nicor or ComEd.
7. The City is perplexed as to why the USEPA has closed its file on this matter without even issuing a request for information to Nicor and ComEd under its various authorities, including the SDWA.

The City has already provided USEPA with 4000+ pages of information, including two expert reports prepared by David M. Hendron, P.E., Senior Managing Engineer at SCS Engineers. Hendron will be available at the meeting to provide a brief overview of the data and answer questions. However, the statement to Tom Poy in my 9/30/15 email (part of the 11/19/15 Tom Poy email train) warrants repeating:

Frankly, however, we do not see any significant technical issues. Coal tar is present in the City's water line at orders of magnitude above the MCL (although, thankfully, constituents of coal tar are not present in the City's drinking water above RLs). Our 9/25/15 correspondence explained the nexus between Nicor/ComEd and the coal tar. The question we need to discuss is whether USEPA will exercise its authority under the SDWA to address this issue. At a minimum, USEPA should issue requests for information to Nicor and ComEd requesting, *inter alia*, a description of their historic gas distribution infrastructure in the City of Evanston.

Regards,

Jeffery D. Jeep
Jeep & Blazer, L.L.C.

Tuesday, April 19, 2016 at 11:32:17 AM Pacific Daylight Time

Subject: Evanston (IL0310810) - IEPA Correspondence Dated March 31, 2016

Date: Monday, April 18, 2016 at 3:50:34 PM Pacific Daylight Time

From: Jeffery D. Jeep

To: W. David McMillan, P.G.

CC: W. Grant Farrar, Michelle L. Masoncup, David D. Stoneback, Thomas Poy

David,

The attached letter dated 4/18/16 is submitted on behalf of the City of Evanston in response to your letter of 3/31/16 (also attached).

Regards,

Jeffery D. Jeep

Jeep & Blazer, L.L.C.

3023 N. Clark Street, #214

Chicago, IL 60657

Direct: (708) 505-3801

Cell: (708) 404-9090

Email: jdjeep@enviroatty.com

Web Site: www.jeepandblazer.com

Please consider the environment before printing this e-mail.

Jeep & Blazer, L.L.C.
environmental law

Jeffery D. Jeep*
Michael S. Blazer**

* Also admitted in Massachusetts
** Also Admitted in New York, Pennsylvania and Washington

3023 N. Clark Street
No. 214
Chicago, Illinois 60657

(708) 505-3801 (Direct)
(708) 404-9090 (Cell)

Jeffery D. Jeep
email: jdjeep@enviroatty.com

Web Site:
www.jeepandblazer.com

Via Electronic Mail (Dave.McMillan@illinois.gov)

April 18, 2016

W. David McMillan, P.G.
Manager
Bureau of Water
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, IL 62794-9276

Re: **Evanston (IL0310810)**
IEPA Correspondence Dated March 31, 2016

Dear Mr. McMillan:

On March 30, 2016, we provided you with a copy of the Notice of Intent to Sue ("NOITS") under the federal Resource Conservation and Recovery Act that was issued by the City of Evanston to Nicor and ComEd on February 22, 2016 (3074 pages), along with a copy of the letter from Mayor Elizabeth Tisdahl addressed to Robert A. Kaplan, Acting Region 5 Administrator. Our March 30, 2016 correspondence is attached (without the NOITS) as **Attachment 1**. The NOITS and the Mayor's letter explained that Manufactured Gas Waste Oils are present in and around James Park, including on and in the Dodge Avenue Water Main. The NOITS (p. 3) states as follows:

MG Waste Oils are present in soil and groundwater in and around James Park, and, specifically appearing as a crustaceous coating ("black crust") on a potable water line running along Dodge Avenue in Evanston (the "Dodge Avenue Water Line") which (1) threatens to penetrate the Dodge Avenue Water Line and contaminate drinking water with constituents of MG Waste Oils and which (2) has in fact penetrated the Dodge Avenue Water Line and released constituents of MG Waste Oils to the drinking water therein, specifically fluoranthene and

phenanthrene, as described in (i) the [January 30, 2015 report from David M. Hendron, PE, Senior Project Manager, SCS Engineers ("Hendron"), entitled "Opinion on the Source of the Occurrence of Petroleum and Gas in Monitor Wells and Borings in the James Park Area" ("2015 Hendron Report")], (ii) the September 25, 2015 correspondence to Ms. Susan Hedman, then Region 5 Administrator (the "Hedman Letter")..., (iii) the [February 10, 2016 report prepared by Hendron entitled "Sampling and Analytical Report for Dodge Avenue Water Main Replacement" (the "2016 Hendron Report")], (iv) the email addressed to Leveret Nelson, Regional Counsel, U.S. EPA Region 5 dated February 12, 2016 (the "Nelson Email")..., and (v) Table 1, "Drinking Water and Internal Pipe Crust Results - Detected VOCs and SVOCs Water and Internal Crust Samples from Sites Near Dodge Avenue Water Main Replacement Project" and associated Laboratory Reports (the "Drinking Water Data")....

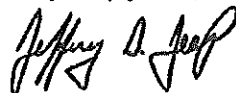
On March 31, 2016, in a letter addressed to Walter Bobkiewicz, City Manager for the City of Evanston, and pursuant to Section 19 of the Illinois Environmental Protection Act, 415 ILCS §5/19, you requested the following information from the City:

[T]hat the City report within 15 days of receipt of this letter if it, through operation of the water distribution system, has replaced or repaired any water mains discovered within 25 feet of areas contaminated by hydrocarbons since October 1, 2015.

By "hydrocarbons" we assume you mean MG Waste Oils, the subject of the NOITS and Mayor Tisdahl's letter to Region 5. We enclose as **Attachment 2** a map of the locations where MG Waste Oils have been observed in and around James Park (and as described in more detail in the 2015 and 2016 Hendron Reports). Apart from the Dodge Avenue Water Main Replacement, described in the 2016 Hendron Report and completed in September 2015, since October 1, 2015 water mains have not been replaced or repaired within 25 feet of the locations where MG Waste Oils have been observed, as depicted in **Attachment 2**.

In our correspondence of April 7, 2016 (enclosed as **Attachment 3**), we inquired whether you would like to schedule a conference call or meeting with Mr. Hendron. Our offer still stands. Please let us know if and when you would like to get together.

Very truly yours,



Jeffery D. Jeep

Letter to W. David McMillan, P.G.
Jeep & Blazer, L.L.C.
Page 3 of 3

cc: W. Bobkiewicz, City Manager, City of Evanston
G. Farrar, City Attorney, City of Evanston
M. Masoncup, Deputy City Attorney, City of Evanston
D. Stoneback, Utilities Director, City of Evanston
T. Poy, Branch Chief, USEPA Region 5

JDJ/me

ATTACHMENT 1

Subject: Constituents of Coal Tar in Water Samples from Dodge Avenue Water Line

Date: Wednesday, March 30, 2016 at 10:06:11 AM Central Daylight Time

From: Jeffery D. Jeep <jdjeep@enviroatty.com>

To: Dave McMillan <Dave.McMillan@illinois.gov>

CC: Michelle L. Masoncup <mmasoncup@cityofevanston.org>, David M. Hendron, P.E. <dhendron@scsengineers.com>, Thomas Poy <Poy.thomas@Epa.gov>

BCC: Michael S. Blazer <mblazer@enviroatty.com>

<https://www.dropbox.com/s/6w1lizlr08hv0rj/160222%20James%20Park%20Amended%20NOITS.pdf?dl=0>

Dave,

Our firm has been retained as outside counsel by Grant Farrar, the City Attorney, to address contamination issues associated with the MGP waste in and around James Park in the City of Evanston. Please direct all future communications concerning this matter to my attention.

I understand from your discussion this morning with Michelle Masoncup, Deputy City Attorney, that you have questions concerning the current status of constituents of coal tar within the Dodge Avenue Water Line. As a preliminary matter, I assume that you have reviewed the Amended RCRA Notice of Intent to Sue issued by the City of Evanston on 2/22/16 and Mayor Tisdahl's letter to U.S. EPA, Region 5 dated 3/4/16. I enclose a Dropbox Link (above) to the Amended NOITS. I will also send you the NOITS via the IEPA's FTP site at <https://filet.illinois.gov/filet/plmupload.asp>. The Mayor's letter is attached.

Regarding your question to Michelle, whether the Coal Tar has seeped into the Dodge Avenue Water Line at other locations, please refer to the Second Bullet on Page 3 of the Mayor's letter, which criticizes U.S. EPA for failing to investigate this very issue. Please also refer to the Amended NOITS, ¶ 6(c), "Third Endangerment - Contamination of Drinking Water Caused by Disposal of MG Waste Oils" and ¶ 48 of the Amended NOITS (including attachments referenced therein). The City has explained repeatedly to U.S. EPA, Region 5 that MG Waste Oils (Coal Tar) associated with the Skokie MGP Site have penetrated the Dodge Avenue Water Line and released constituents of MG Waste Oils to the drinking water therein, specifically fluoranthene and phenanthrene. Again, if you have not done so, please review the enclosed materials.

I recommend that we schedule a conference call with Dave Hendron, our consulting engineer, to address any additional questions you may have. Please provide me with dates when you are available. I also encourage you to invite USEPA, Region 5 to participate in the call. Perhaps U.S. EPA will respond to your invitation. To date, Region 5 has ignored all of the City's communications concerning this urgent matter.

Regards,

Jeffery D. Jeep

Jeep & Blazer, L.L.C.

Please note new address and direct line as of August 1, 2015

3023 N. Clark Street, #214

Chicago, IL 60657

Direct: (708) 505-3801

Cell: (708) 404-9090

Main: (773) 857-1843

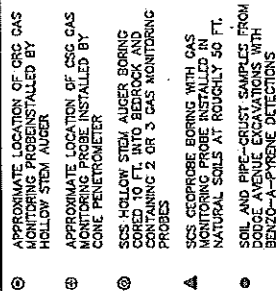
Fax: (708) 236-0828

Email: jdjeep@enviroatty.com

Web Site: www.jeepandblazer.com

Please consider the environment before printing this e-mail.

ATTACHMENT 2



SCALE: 1" = 200'

CONFIDENTIAL

ATTACHMENT 3

Subject: Re: Constituents of Coal Tar in Water Samples from Dodge Avenue Water Line
Date: Thursday, April 7, 2016 at 1:30:43 PM Central Daylight Time
From: Jeffery D. Jeep <jdjeep@enviroatty.com>
To: Dave McMillan <Dave.McMillan@illinois.gov>
CC: Michelle L. Masoncup <mmasoncup@cityofevanston.org>, David M. Hendron, P.E. <dhendron@scsengineers.com>, Thomas Poy <Poy.thomas@Epa.gov>

Dave,

In follow-up to your 3/31/16 letter (attached) and my email of 3/30/16 (below), please direct all communications concerning this matter to my attention. See *highlighted* language in my email (below). We will respond to your letter as appropriate. In the meantime, I assume that you have now familiarized yourself with the materials I provided (below). Also, please refer to the *highlighted* language in my email below. Do you want to schedule a conference call with Dave Hendron? If so, will Region 5 participate?

Regards,

Jeffery D. Jeep

Jeep & Blazer, L.L.C.

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From: "Jeffery D. Jeep" <jdjeep@enviroatty.com>
Date: Wednesday, March 30, 2016 at 10:06 AM
To: David McMillan <Dave.McMillan@illinois.gov>
Cc: "Michelle L. Masoncup" <mmasoncup@cityofevanston.org>, "David M. Hendron, P.E." <dhendron@scsengineers.com>, Thomas Poy <Poy.thomas@Epa.gov>
Subject: Constituents of Coal Tar in Water Samples from Dodge Avenue Water Line

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Regards,

Jeffery D. Jeep

Jeep & Blazer, L.L.C.

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